

1 West - redirect

144

2 Will you turn again to Schedule A of the ONJ
3 stipulation?

4 A Okay.

5 Q And since we're discussing Mr.
6 Darrah, Mr. West, could we use his example?

7 Mr. Darrah's example as I recall
8 was with respect to the ISDN service where the
9 tariff rate is expressed as \$360 and the proposed
10 education rate is expressed as \$100 resulting in
11 a percent discount of 72 percent. Can we do
12 that?

13 A Yes.

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2 Q The way Mr. Darrah would relate
3 the ONJ stipulated Schedule A rates to Federal
4 Universal Services, in a district that is
5 entitled to a 20 percent Federal Universal
6 Service discount, how much would the school pay
7 for this service?

8 A Well, they would go ahead and pay
9 the \$100 under Schedule A.

10 Q And how much would Bell Atlantic
11 get back from the Universal Service?

12 A I believe Mr. Darrah's proposal
13 would set the proposed education rate, the LCP
14 and, therefore, would be 20 percent times \$100 or
15 \$20 back.

16 Q So the net that the school would
17 pay under Mr. Darrah's proposal would be \$80 and
18 what Bell Atlantic would receive from the
19 Universal Service Fund would be \$20, is that
20 correct?

21 A Correct, because in his proposal,
22 the proposed education rate becomes the LCP. So
23 it is a thing that the Universal Service discount
24 is applied to. So the effective rate to the
25 school is \$80 and 20 percent times \$100 is

1 West - redirect

146

2 returned from the Fund Administrator to Bell
3 Atlantic.

4 Q Can I take you through this same
5 example with one change in the hypothetical and
6 that is that the school district we're talking
7 about is entitled to a 90 percent discount. In
8 that case, how much does the school under Mr.
9 Darrah's proposal wind up paying to Bell Atlantic
10 for a \$360 tariff rate service?

11 A My understanding of this proposal
12 would have the \$100 multiplied by the 90 percent.
13 So you would have a situation where they would
14 end up paying \$10 for the highest service and \$90
15 would be coming back to Bell Atlantic-New Jersey
16 from the Fund Administrator.

17 Q In fact, Mr. West, under Mr.
18 Darrah's proposal in each case where a school
19 district is entitled to 20, 40, 50, 60, 80 or \$90
20 in every case, there is a Universal Service
21 discount applied on top of the Schedule A
22 discount, is that correct?

23 A Right. He's proposing to cascade
24 the discount.

25 Q He's proposing to cascade the

1 West - redirect 147
2 discount and not make them alternative as
3 Sentence 2 expresses, is that correct?
4 A That's correct.
5 Q And of course, under Mr. Darrah's
6 proposal, Bell Atlantic would not be entitled to
7 get the difference between the tariffed rate and
8 the Schedule A rate back from Universal Service,
9 correct?
10 A Right. Under his proposal, the
11 tariff rate no longer has a place in the
12 calculus.
13 Q And to the extent that Mr. Darrah
14 believes that Bell Atlantic, the Ratepayer and
15 the Board's Staff would agree to that, Bell
16 Atlantic, the Ratepayer and Board's Staff would
17 in effect be violating Sentence 3 of Paragraph G,
18 is that not correct?
19 A It would appear to be they're
20 going against their own Stipulation, yes.
21 Q Now the Ratepayer Advocate
22 reserved the right to argue for something
23 different in this proceeding, did he not?
24 Did the Ratepayer not?
25 A Yes.

1 West - redirect

148

2 Q And that's expressed in Sentence
3 4, correct?

4 A That's right. That's the last
5 sentence, that's the top paragraph on Page 6.

6 Q But that reservation of the
7 Ratepayer to make that argument would in effect
8 be a departure from the previous two sentences,
9 correct?

10 A As I read the agreement, yes.

11 Q Now Mr. Pappalardo on cross-
12 examination also referred you to, I believe, 473
13 of the Federal Universal Service Order, the
14 paragraph that talks about the prediscount rate,
15 is that correct?

16 A Yes.

17 Q As you understand the prediscount
18 rate generally, Mr. West, is it not composed of
19 both the price the school or library pays the
20 carrier and what the carrier gets from the
21 Universal Service Fund?

22 A Yes.

23 Q Is there anything that you know
24 that would prevent this Board from including in
25 the discount to the carrier from Universal

1 West - redirect

149

2 Service what the school and library pays, an
3 additional sum to be paid from the carrier?

4 A The Board could do that if they so
5 desire.

6 Q In essence, supplementing the
7 Federal Universal Service Fund?

8 A If they choose to do that, yes.

9 Q Is there anything that you know of
10 in the statute or in the regulations or in the
11 Stipulation that would prevent them from doing
12 that, the Board from doing that?

13 A No.

14 Q Now let's go through the math once
15 again using Mr. Darrah's example, but under the
16 understanding that Bell Atlantic-New Jersey has
17 of how the Federal Universal Service discount
18 should interface with the Schedule A rates.

19 Let's go again to ISDN service on
20 the top of Schedule A, that of a tariff rate of
21 \$360 and let's take the situation of a school
22 that is entitled to a 20 percent Federal
23 Universal Service rate.

24 Now under Bell Atlantic's
25 proposal, how much does the school pay to Bell

1 West - redirect 150
2 Atlantic for that service?
3 A \$100.
4 Q And how much in dollar amount
5 would Bell Atlantic be permitted to get back from
6 Federal Universal Service?
7 A The 20 percent times the \$360
8 which is 72.
9 Q And that leaves how much, Mr.
10 West, that Bell Atlantic would get back from no
11 source, but would have to bear on its own?
12 A That would be the difference
13 between the 360 and the sum of 72 and 100.
14 Q Which would be 188, is that
15 correct?
16 A Your math is better than mine.
17 Yes.
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1 West - redirect 151

2 Q And if you did the same thing for
3 a 40 percent school, Mr. West, would not the
4 school be paying \$100, the Universal Fund paying
5 40 percent or \$144 and Bell Atlantic having to
6 bear the cost of \$116?

7 MR. PAPPALARDO: I'm sorry, I
8 missed the beginning of your question,
9 Mr. Dennehy. Do you want to repeat it?

10 MR. DENNEHY: I would be happy
11 to repeat it.

12 Q Using the same example of ISDN
13 service and Schedule A rates but substituting
14 instead a school or library that was entitled to
15 a 40 percent Universal Service discount, would
16 not the result under Bell Atlantic's methodology
17 be again that the school pays only \$100.

18 Bell Atlantic receives from the
19 Federal Fund from the tariff rate or \$144. And
20 the remainder is borne by Bell Atlantic, the
21 remainder in my case, if my math is correct being
22 \$116?

23 A Right. That would mean the 360
24 minus the 144 minus the 100.

25 Q So when Bell Atlantic combines as

2 it reserved in this stipulation, Federal
3 Universal Service discounts and the Schedule A
4 rates, it's not getting away with paying a
5 substantial amount for these ISDN services to
6 schools, is it?

7 A No, there's still - - if you want
8 to consider the tariff rate be made whole, there
9 certainly is an under-recovery.

10 Q Can we go back, just for a second
11 or two to the concept of the pre-discount rate?
12 I will represent to you that three days ago on
13 Monday, in response to a question from me, Mr.
14 Darrah who was the witness for AT&T was asked:
15 "Mr. Darrah, in your opinion does this Board have
16 the authority to determine the pre-discount price
17 for ONJ service?"

18 And Mr. Darrah said: "In my
19 opinion, yes. This Board does have the
20 opportunity to determine the pre-discounted
21 price."

22 Do you agree with Mr. Darrah on
23 that point, sir?

24 A Yes, because the discounts are
25 being applied to intrastate rates, yes.

2 Q And in fact, Mr. West, in your
3 understanding under the Federal Universal Service
4 order, does not this Board have the ability and
5 the authority to determine the lowest
6 corresponding price?

7 A The way I read the order this
8 Board is the authority on LCP with respect to the
9 intrastate side.

10 Q Now there's just a couple of other
11 matters I would like to clarify because I think
12 they may have been a bit unclear on the record,
13 not through anyone's fault. But with respect to
14 the four services that are offered in Schedule A
15 of the ONJ stipulation, what is the rate
16 structure with respect to each of those, with
17 respect to ATM, Frame Relay, SMDS and ISDN?

18 A I have been informed by the tariff
19 guru a Frame Relay and SMDS are services that we
20 have filed to be competitive but aren't in that
21 category yet. ISDN was filed as a rate regulated
22 service. An ATM is a brand new service. I don't
23 think it's tariffed per se.

24 Q Now Mr. West, Mr. Laskey asked you
25 on cross examination if you were aware of how

2 much money is expected to come out of New Jersey
3 into the Universal Service Fund. In other words,
4 how much is to flow from New Jersey to the feds.

5 A Yes, he did.

6 Q And what was your answer?

7 A Our estimate was roughly \$80
8 million.

9 Q From your understanding of the
10 Ratepayer Advocate's proposal, if New Jersey gets
11 what it needs, what the Ratepayer Advocate has
12 stated is it's funding requirements from the
13 Universal Service fund, will there be a net
14 outflow or inflow to New Jersey?

15 A My understanding of the
16 Ratepayer's requirements is something on the
17 order of \$40 million which would lead me to
18 believe that there would be a net outflow of \$40
19 million to other states schools and libraries.

20 Q Mr. West, do you think it is
21 important for the citizens of New Jersey to
22 reduce that net outflow to the feds to other
23 states, other school districts in other states as
24 much as possible?

25 A Without appearing too selfish, it

2 would seem since the money is implicitly
3 collected from our telephone subscribers, the
4 money ought to revert back to New Jersey.

5 Q And would it not therefore be in
6 the interest of New Jersey generally for it's
7 citizens, corporate or otherwise, to recover as
8 much as possible from the Federal Universal
9 Service Fund?

10 A I think that's true because if you
11 don't attempt to recover, it goes to one of those
12 block states.

13 Q Finally, I want to ask you a
14 question about the authority of this Board, Mr.
15 West. There were questions put to you under the
16 terms of which it was assumed that the school
17 district might want to bypass the federal bidding
18 requirements altogether.

19 Is it not within the authority of
20 this Board, in your understanding, to order that
21 any school or library that wanted to take
22 advantage of the ONJ rates should go through the
23 Federal bidding requirement?

24 A I think given these are the Board
25 discount rates and these are the Board intrastate

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West - cross

156

rates, as long as you're not talking about a pure interstate situation, I think the Board has that authority.

MR. DENNEHY: I have nothing further.

1 West - recross

157

2 COMMISSIONER ARMENTI: Mr.

3 Pappalardo?

4 Mr. West, are you okay?

5 THE WITNESS: Great.

6 MR. PAPPALARDO: Thank you,

7 Your Honor.

8 RECROSS-EXAMINATION

9 BY MR. PAPPALARDO:

10 Q Mr. West, if I understand your
11 testimony on redirect, you said you were aware
12 there was a motion pending that Bell Atlantic had
13 made in clarification of the ONJ situation, but
14 you're not aware of the Ratepayer's position, is
15 that accurate?

16 A Yes.

17 Q Let me hand you an exhibit that
18 I'll mark as AT&T Exhibit, I think, 182 that
19 we're up to, and it has a cover letter indicating
20 reply brief, Ratepayer Advocate to Bell
21 Atlantic's motion for clarification of Order
22 approving ONJ stipulation.

23 A Yes.

24 (Whereupon, document entitled

25 Reply Brief by the Ratepayer Advocate to

2 Bell Atlantic-New Jersey's Motion for
3 Clarification of Order Approving ONJ
4 Stipulation was marked Exhibit AT&T-182
5 for identification.)

6 Q If I could direct your attention
7 to Page 5 of that document?

8 A Okay.

9 Q Do you see the first sentence of
10 the first full paragraph, which reads: "In the
11 ONJ Stipulation, BA-NJ and the Ratepayer Advocate
12 to disagree as to whether BA-NJ's discounted
13 education rates should be available separate from
14 or in addition to any discounted rates
15 implemented by the Federal Government."

16 Have I read that correctly?

17 A That's what it says.

18 Q Would that tell you that the
19 Ratepayer Advocate has adopted a position
20 different from what you have stated in your
21 direct testimony?

22 MR. DENNEHY: Your Honor, I
23 object to the point that Mr. West
24 testified on the initial cross-examination
25 that he was unaware of Ratepayer's

position. He's just been handed a 10-page brief on a point that I think we can all agree is somewhat complex and to ask him to make conclusions about what is said in a single sentence, in a single point in a brief, I think is very unfair. He is not a lawyer.

COMMISSIONER ARMENTI: Mr. West handled himself pretty well this morning. I think he is able to answer the question, if you can.

THE WITNESS: Without the proviso so expressed by my counsel, it would appear that this represents a departure from the position in the stipulation.

BY MR. PAPPALARDO:

Q Your answer assumes two things, that the Ratepayer has agreed in this stipulation that Schedule A discount is an alternative to the federal discount matrix and I assume they are now changing that position, is that correct?

A Yes, that's how I read this and again, I read one puny sentence out of 10 pages.

Q Now you also talked with Mr.

1 West - recross

160

2 Dennehy about Schedule A and the example of ISDN,
3 and that what Bell would receive from a school
4 who purchased that service. I think we all agree
5 that Bell's position is that that school pays
6 Bell Atlantic \$100 and then Mr. Dennehy's one
7 example, Bell Atlantic gets 20 percent of that,
8 the school is eligible for a 20 percent discount
9 or \$72 from the Federal Fund. Do you recall
10 that?

11 A I recall going through that, yes.

12 Q And at the end of the day for that
13 service, Bell gets \$172 from both the school and
14 Federal Fund, is that correct?

15 A The school gets a 20 percent
16 discount from the Federal Fund.

17 Q Let me go through the math.

18 A Go ahead.

19 Q \$100 the school pays under
20 Schedule A rate, 20 percent of the tariff rate
21 and 365, which is 72. I add those two together
22 to get \$172.

23 My understanding is your position
24 is that that is what Bell would receive at the
25 end of the day for providing that service to a

1 West - recross

161

2 school that's eligible for 20 percent federal
3 discount?

4 A I think that it was Mr. Darrah's
5 position that \$100 would represent the LCP.

6 Q I'm not asking what your position
7 is. When you walked through with Mr. Dennehy,
8 was that Bell Atlantic's position of what they
9 were entitled to get?

10 A Bell's position is that the
11 tariffed rate is the LCP. So if there is a 20
12 percent discount eligible from the factor, from
13 the FCC Universal Service discount matrix, there
14 would be \$72 coming from the Fund Administrator
15 and you're correct, a \$100 rate would be charged
16 to the school per Schedule A and Atlantic's total
17 recovery for the provision of that service would
18 be \$172.

19 Q Now if AT&T has the same service
20 as MCI and offers it a tariff rate of \$380 to the
21 same school and let's take it in steps, first a
22 20 percent discount the school is offered that
23 tariff rate, the school will be paying much more
24 than \$100 and would not accept AT&T or any other
25 carrier be it on that basis?

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West - recross

162

A Right.

Q However, as we suggested earlier, AT&T or MCI or other carriers can resell this service from Bell Atlantic to that school?

A Correct, at the \$100 rate, I think we agreed upon earlier as long as they resell it to schools or libraries, yes.

Q What does AT&T get back from the Federal Fund? Do you remember my example of a tariff rate of \$380?

A You see, in my opinion, what is good for the goose is good for the gander and the \$180 would represent AT&T's LCP and they ought to be able to go and get \$76 out of the fund.

2 Q Notwithstanding the fact that in
3 both examples, all the schools are paying \$100?

4 A Agreed. I mean this discount
5 structure is complicated, undeniably giving the
6 number of hours we spent on it this morning.

7 Q What will prevent a carrier who
8 decides to target the schools for these
9 particular services from putting out a tariff
10 rate of, say, \$400 for the ISDN service knowing
11 the school would never buy at that rate, but
12 knowing it can resell the \$100 service and go to
13 the Federal Fund and say give me my \$400?

14 A I think what prevents is that the
15 LCP is the lowest corresponding price. So to the
16 extent that Bell Atlantic has got a 360 flowing
17 around there, the 380 or 400 couldn't qualify as
18 the LCP, so that would be ineligible for a
19 discount.

20 Q But the LCP for Bell Atlantic is
21 the tariffed rate notwithstanding what the school
22 is paying, but for other carriers, the LCP is not
23 their tariffed rate, notwithstanding what the
24 school is paying, but what some other carrier may
25 have out there as a tariffed rate. That has no

1 West - recross

164

2 relation.

3 For example, what if MCI, now AT&T
4 has the \$400 rate? Bell has the 380 rate and MCI
5 has a \$340 tariffed rate. What's the LCP the
6 school is paying, \$100?

7 A Well, if MCI, if the school
8 selects MCI.

9 Q No, I'm sorry. My example is
10 AT&T, they have \$100 and all the carriers
11 essentially come in and say resell \$100. Bell
12 has their \$100. Everything being equal, I look
13 at the service and for some reason out there was
14 a \$340 tariff rate for MCI, a 360 tariff rate for
15 Bell Atlantic and a \$400 tariff rate for AT&T.

16 What do we tell the funded
17 administrator is the LCP for calculating what
18 they reimburse AT&T for?

19 A I think if they're reselling a
20 Bell Atlantic service in that situation, the LCP
21 is still the 30-60.

22 Q A few minutes ago my three-80
23 example was good for the goose, good for the
24 gander and they would get the three-80. Are you
25 changing that testimony now?

1 West - recross 165
2 A Yes.
3 Q Why?
4 A Because the three-60 is lower than
5 three-80.
6 Q The three-40 is lower than three-
7 60.
8 A But the three-40 isn't necessarily
9 corresponding to the service that is purchased
10 because the ultimate price is not the lowest.
11 Q Are we going by -- I'm not sure
12 what we're going by in terms of the lowest, but in
13 terms of the lowest, we're not going by the
14 lowest tariff rate out there nor are we going by
15 the lowest rate that is actually paved.
16 We're now trying it to whose
17 service is being resold and what that wholesale
18 tariff rate is, is that your position?
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2 A I think in the situation of resale
3 that it has to go back to the tariffed rate which
4 the carrier purchases the service on a resale
5 basis.

6 Q However, if now AT&T decides not
7 to resell but to enter into a CSP with the school
8 for a \$100 and still has its tariff rate for
9 \$400, now, what do they do with the Fund
10 administrator?

11 A If their CSP is \$100 and that rate
12 ultimately gives the school the lowest effective
13 rate, then, I think there is an argument that
14 says now you have supplanted Bell Atlantic's \$360
15 and now, perhaps, that is the LCP.

16 Q I'm sorry, "that" meaning \$400 or
17 the \$100 is the LCP? The AT&T tariff rate or the
18 rate the school actually pays?

19 A It might be the actual resale
20 rate.

21 Q We're not talking about resale,
22 we're just talking -- AT&T decides that it can
23 enter into a CSP with that customer for \$100 so,
24 we're not reselling the service, the tariff rate
25 is \$400 and enter into a CSP for \$100. What is

1 West - recross

167

2 the LCP?

3 A I think for a similarly situated
4 customer the LCP then becomes the \$100.

5 Q Does the customer then -- the 20
6 percent customers, would they now get a 20
7 percent on the LCP?

8 Is that correct?

9 A Yes.

10 Q So, in effect, the customer now
11 with AT&T is paying \$80, AT&T is getting
12 reimbursed \$20, and at the end of the day AT&T
13 has received \$100 for its service.

14 Is that correct?

15 A Yes.

16 Q Notwithstanding the fact they
17 essentially matched Bell's actual rate to the
18 customer, Bell Atlantic at the end of the day
19 receives \$172 from the Fund and from the school
20 for the same service but AT&T only gets \$100 even
21 though the tariff rate is higher than Bell
22 Atlantic's.

23 A I think in general that would be
24 true because the tariff rate is applicable to all
25 ISDN customers but, if you had a customer that

1 West - recross

168

2 was simply situated to the one that AT&T offers
3 the CSP at \$100, I think that becomes now the
4 market rate.

5 Q But it's not the market rate for
6 Bell Atlantic. The market rate for Bell Atlantic
7 for purposes of reimbursement from the Fund is
8 still \$360.

9 A No, I don't think so. I don't
10 think that Bell Atlantic ever locked itself into
11 -- the tariff rate is always being the LCP is
12 when you introduce the complication of CSP and it
13 is a large complication. They, too, have
14 influence in the market and those can become the
15 LCPs because the customer could go to AT&T and
16 say, I'm similarly situated, you gave Customer A
17 a \$100 rate, I want a \$100 rate.

18 Q And they would get the Federal
19 discount of that \$100 rate from AT&T, right?

20 A Yes, they would and AT&T ought to
21 be able to go back to the Federal Universal
22 Service Fund and in this case collect \$20.

23 Q But a similar situated Bell
24 Atlantic customer who says to maybe Mr. Perkins'
25 school who is getting \$100 can say I want the